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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,391	09/20/2000	A. Maxwell Eliscu	46983/103	6064
26371 7590 09/23/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER LIVERSEDGE, JENNIFER L				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* A. MAXWELL ELISCU  
9

10  
11 Appeal 2009-003856  
12 Application 09/667,391  
13 Technology Center 3600  
14

15  
16 Decided: September 23, 2009  
17  
18

19  
20 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and BIBHU R.  
21 MOHANTY, *Administrative Patent Judges*.

22  
23 CRAWFORD, *Administrative Patent Judge*.  
24

25  
26 DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54, 56-64, and 66-67. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented systems and methods for receiving referrals from referring parties, including independent lenders, insurance companies, leasing companies, governmental groups (e.g., local, state, federal, international), business to business web portals or e-commerce marketplaces or any party referring businesses who may be seeking or may benefit from the transaction management and financial services provided by the system (Spec. 1:2-9).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. In a transaction management and financial services system configured to communicate between a server and at least one remote device via a network, a method comprising:

providing a screen display indicating an affiliation with a referring party;

receiving a referral from the referring party, the referral including information regarding any of a financing-seeking party that has been declined by the referring party, a transaction management-seeking party, a trade credit-seeking party, and a credit guarantee-seeking party;

receiving commercial transaction information associated with the referral;

storing the information regarding the referral and the received commercial transaction information in a storage device;

determining whether the referral satisfies  
system-based parameters;

if the referral satisfies system-based  
parameters, determining whether the system has  
sufficient information to engage the referral;

if the system has sufficient information,  
engaging the referral;

if the referral becomes engaged, establishing  
an account for the referral;

providing operations which can be  
performed by the referral, the operations  
associated with managing a commercial  
transaction;

capturing data access information associated  
with what data is accessed by the referral using the  
provided operations;

forming a profile for the referral that  
includes the captured data access information; and

storing the formed profile in the storage  
device.

The prior art relied upon by the Examiner in rejecting the claims on  
appeal is:

Kleinberg	US 2001/0037265 A1	Nov. 1, 2001
Wilkinson	US 2001/0049646 A1	Dec. 6, 2001

The Examiner rejected claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54,  
56-64, and 66-67 under 35 U.S.C. § 112, second paragraph, as being  
indefinite for failing to particularly point out and distinctly claim the subject  
matter which Appellant regards as the invention; and claims 1-3, 5, 8-12, 14-  
17, 19-35, 37-52, 54, 56-64, and 66-67 under 35 U.S.C. § 103(a) as being  
unpatentable over Wilkinson and Kleinberg.

1 We REVERSE.

2 ISSUES

3 Did the Appellant show the Examiner erred in asserting that the  
4 “referral” is indefinite because it is unclear how the “referral” performs  
5 operations and accesses data, as recited in independent claims 1, 56, and 57?

6 Did the Appellant show the Examiner erred in asserting that  
7 Wilkinson discloses providing operations which can be performed by the  
8 referral, the operations associated with managing a commercial transaction,  
9 capturing data access information associated with what data is accessed by  
10 the referral using the provided operations, and forming a profile for the  
11 referral that includes the captured data access information, as recited in  
12 independent claims 1, 56, and 57, because Wilkinson discloses that all data  
13 is provided by either the demander or the supplier?

14

15 FINDINGS OF FACT

16 *Specification*

17 Appellant invented systems and methods for receiving referrals from  
18 referring parties, including independent lenders, insurance companies,  
19 leasing companies, governmental groups (e.g., local, state, federal,  
20 international), business to business web portals or e-commerce marketplaces  
21 or any party referring businesses who may be seeking or may benefit from  
22 the transaction management and financial services provided by the system  
23 (1:2-9).

24 Existing customer 761 and target customer 762 of referring party 780,  
25 submits applications to referring party 780. Following the submission of an  
26 application, referring party can either approve or decline the application. If

1 financing seeking party 761 or 762 is declined, referring party 780 forward  
2 the application for financing to transaction management and financial  
3 services system 100 for approval (19:28-30 20:1-12).

4 If approved, marketplace 201 is accessed by the finance seeking party  
5 via the Internet. The financing seeking party accesses and manages the  
6 financing provided by transaction management and financial service system  
7 100 via marketplace 201 (22:20-24).

8  
9 *Wilkinson*

10 Wilkinson discloses a database used by both demanders and supplier  
11 in a financing context. A “demander” is an entity searching for funding and  
12 a “supplier” is an entity desiring to supply funds. Searches of the member  
13 demander and supplier database may be initiated by suppliers, demanders, or  
14 both suppliers and demanders ([0016]-[0022]).

15 The service provider gathers or is provided data from the demander.  
16 The data collected by the service provider to create a financial profile of the  
17 demander falls within essentially three general areas: general information,  
18 the type of financing sought, and the names of suppliers to which the  
19 demander previous applied ([0035]).

20  
21 PRINCIPLES OF LAW

22 *Indefiniteness*

23 A claim is definite if “one skilled in the art would understand the  
24 bounds of the claim when read in light of the specification.” *Personalized*  
25 *Media Commc’ns, LLC v. Int’l Trade Comm’n*, 161 F.3d 696, 705 (Fed. Cir.  
26 1998).

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. *In re Johnson*, 558 F.2d 1008, 1015 (CCPA 1977).

## ANALYSIS

### Referral

We are persuaded of error on the part of the Examiner by Appellant's argument that "referral" is sufficiently definite for the purposes of 35 U.S.C. § 112, second paragraph (App. Br. 8). The Examiner appears to assert that "referral" is information, and thus that information cannot "perform operations" or "access data" as recited independent claims 1, 56, and 57 (Ex. Ans. 7-8). However, when "referral" is construed in light of the Specification, one of ordinary skill in the art understands that "referral" corresponds to financing seeking party 761, 762 and all information associated with financing seeking party 761, 762. See *Media Commc'ns, LLC v. Int'l Trade Comm'n*, 161 F.3d at 705. A party can "perform operations" and "access data." The Appellant could have been clearer by using a less confusing term instead of "referral," particularly when "referral" is recited as including information. However, 35 U.S.C. § 112, second paragraph, only requires claims to set out and circumscribe a particular area with a *reasonable* degree of precision and particularity. See *In re Johnson*, 558 F.2d at 1015. As "referral" is sufficiently precise and particular when read in light of the Specification to be a party including information, we will not sustain this rejection.

1           *Capturing Data Access Information*

2           We are persuaded of error on the part of the Examiner by Appellant's  
3 argument that Wilkinson does not disclose providing operations which can  
4 be performed by the referral, the operations associated with managing a  
5 commercial transaction, capturing data access information associated with  
6 what data is accessed by the referral using the provided operations, and  
7 forming a profile for the referral that includes the captured data access  
8 information, as recited in independent claims 1, 56, and 57, because  
9 Wilkinson discloses that all data is provided by either the demander or the  
10 supplier (App. Br. 9-13). By reciting "data ... accessed by the referral using  
11 the provided operations," independent claims 1, 56, and 57 recite that the  
12 data capture occurs *while* the referral is performing an operation.  
13 Accordingly, in the corresponding context of Wilkinson, such a claim  
14 construction requires capturing search data while the demander/supplier is  
15 performing the search, and then saving that information to the  
16 demander/supplier's profile. While Wilkinson may inherently disclose  
17 capturing search data into a temporary file during the normal course of  
18 processing a search request, the portions of Wilkinson cited by the Examiner  
19 do not disclose that such search data, or any other data accessed by the  
20 demander/supplier, is then saved into the demander/supplier's profile.  
21 Indeed, the portions of Wilkinson cited by the Examiner appear to disclose  
22 that *all* profile information is provided by the demander/supplier.

23           Accordingly, we will not sustain the rejection of independent claims  
24 1, 56, and 57. By virtue of their dependency on independent claims 1, 56,  
25 and 57, we also do not sustain the rejection of dependent claims 2-3, 5, 8-12,  
26 14-17, 19-35, 37-52, 54, 58-64, and 66-67.



CONCLUSION OF LAW

On the record before us, Appellant has shown that the Examiner erred in rejecting claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54, 56-64, and 66-67.

DECISION

The decision of the Examiner to reject claims 1-3, 5, 8-12, 14-17, 19-35, 37-52, 54, 56-64, and 66-67 is reversed.

REVERSED

hh

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